

EXHIBIT A

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

22 Cr. 495 (PAE)

5 EDWIN MANON ARIAS,

6 Defendant.

7 -----x

Plea

8 May 5, 2023

9 11:05 a.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge

13
14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 BY: MADISON R. SMYSER

18 Assistant United States Attorney

19 FEDERAL DEFENDERS OF NEW YORK

Attorneys for Defendant

20 BY: ANDREW J. DALACK

21
22
23 Also Present:

24 Cristina Weisz, Spanish Interpreter

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1 (Case called)

2 THE DEPUTY CLERK: Counselors, starting with the front
3 table, please state your appearances for the record.

4 MS. SMYSER: Good morning, your Honor. Madison Smyser
5 for the government.

6 MR. DALACK: Good morning, Judge. Andrew Dalack, from
7 the Federal Defenders of New York, on behalf of Mr. Arias.

8 THE COURT: Good morning, Mr. Dalack; and good morning
9 to you, of course, Mr. Arias. Good morning to the translator
10 who is assisting Mr. Arias today.

11 All right. At the outset I understand, Mr. Dalack,
12 that your client wishes today to plead guilty to a lesser
13 included offense within the scope of the information, is that
14 correct?

15 MR. DALACK: Yes, your Honor.

16 THE COURT: Before we proceed to that, there is a
17 disclosure I need to put on the record. I imagine Mr. Dalack
18 you are aware of that, but in 2019 through 2020, AUSA Smyser
19 worked for me as a law clerk and, indeed, as an excellent law
20 clerk. I encouraged her to apply to the U.S. Attorney's
21 office, strongly supported her application, and we remain in
22 close touch. That said, I am entirely confident that my
23 supervision of this case will be unaffected by the fact that
24 she is a former clerk of mine. Nevertheless, I wanted to put
25 that on the record.

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1 MR. DALACK: Thank you, Judge.

2 THE COURT: Any objection to proceeding?

3 MR. DALACK: Absolutely none.

4 THE COURT: Okay. Very good. Thank you.

5 With that, Mr. Arias -- Arias?

6 MR. DALACK: Arias.

7 THE COURT: Mr. Arias, is it correct today you wish to
8 plead guilty to a lesser included offense within Count One of
9 the information in this case?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And is that plea pursuant to a plea
12 agreement?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Counsel have handed up a signed plea
15 agreement. I am going to mark it as Government Exhibit 1. And
16 later in this proceeding, I will have questions for counsel and
17 for Mr. Arias about that.

18 Mr. Arias, before I accept your guilty plea, I'm going
19 to ask you certain questions so that I can establish to my
20 satisfaction that you wish to plead guilty because you are
21 guilty and not for some other reason. If you don't understand
22 any of my questions or you would like a further opportunity to
23 consult with Mr. Dalack, would you please let me know?

24 THE DEFENDANT: Would you please repeat the question?

25 THE COURT: Of course.

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1 Before I accept your guilty plea, I'm going to ask you
2 certain questions so that I can establish to my satisfaction
3 that you wish to plead guilty because you are guilty and not
4 for some other reason. If you don't understand any of my
5 questions or at any time you would like more time to speak with
6 Mr. Dalack, would you please let me know?

7 THE DEFENDANT: Yes, I understand what you are asking
8 me.

9 THE COURT: Very good.

10 Mr. Arias, are you able to speak and understand
11 English?

12 THE DEFENDANT: No, I don't understand English.

13 THE COURT: Okay. As you can see, we have a
14 translator, a court-certified Spanish translator here to assist
15 you. Would you let me know if at any time you have any
16 difficulty understanding what the translator is saying?

17 THE DEFENDANT: Yeah, the microphone, it needs to
18 raise the volume.

19 (Pause)

20 THE INTERPRETER: I'm going to change the headset.

21 THE COURT: Go ahead.

22 (Pause)

23 THE COURT: All right. Mr. Arias, has the translation
24 equipment been fixed? Can you hear what the translator is
25 saying?

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1 THE DEFENDANT: Yes.

2 THE COURT: If at any point going forward you are
3 having any difficulty hearing the translator or understanding
4 what she is saying, will you please get my attention? Will you
5 please let me know?

6 THE DEFENDANT: Okay.

7 THE COURT: I suggest raise your hand if you are
8 having any problems, and I will know to intervene. Okay?

9 THE DEFENDANT: Okay.

10 THE COURT: Very good.

11 Mr. Smallman, would you kindly place Mr. Arias under
12 oath.

13 THE DEPUTY CLERK: Please rise. Raise your right
14 hand.

15 You do solemnly swear that the testimony you shall
16 give the Court in this issue shall be the truth, the whole
17 truth, and nothing but the truth, so help you God?

18 THE DEFENDANT: I do swear.

19 THE DEPUTY CLERK: Thank you.

20 THE COURT: You may be seated.

21 Mr. Arias, do you understand that you are now under
22 oath and that if you answer any of my questions falsely, your
23 answers to my questions may be used against you in another
24 prosecution for perjury?

25 THE DEFENDANT: Yes.

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1 THE COURT: What is your full name?

2 THE DEFENDANT: Edwin Amauri Manon Arias.

3 THE COURT: How old are you?

4 THE DEFENDANT: I'm 40 years old.

5 THE COURT: How far did you go in school?

6 THE DEFENDANT: I completed four years of college.

7 THE COURT: Have you ever been treated or hospitalized
8 for any mental illness?

9 THE DEFENDANT: No.

10 THE COURT: Are you now or have you recently been
11 under the care of a doctor or a psychiatrist?

12 THE DEFENDANT: No.

13 THE COURT: Have you ever been hospitalized or treated
14 for addiction to any drugs or alcohol?

15 THE DEFENDANT: No.

16 THE COURT: Is your mind -- within the past 24 hours,
17 have you taken any drugs, medicine, or pills or drunk any
18 alcoholic beverages?

19 THE DEFENDANT: No.

20 THE COURT: Is your mind clear today?

21 THE DEFENDANT: Sure.

22 THE COURT: Yes?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand what's happening in this
25 proceeding.

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Dalack, do you have any doubt as to
3 your client's competence to plead at this time?

4 MR. DALACK: I do not, your Honor.

5 THE COURT: And how about you, Ms. Smyser?

6 MS. SMYSER: No, your Honor.

7 THE COURT: Okay, very good.

8 Look, based on his responses to my questions and his
9 demeanor as he appears before me, I find that the defendant is
10 competent to enter a plea of guilty at this time.

11 All right. Mr. Arias, have you had a sufficient
12 opportunity to discuss your case with your attorney?

13 THE DEFENDANT: Yes.

14 THE COURT: Have you had a sufficient opportunity to
15 discuss the particular charge to which you intend to plead
16 guilty, any possible defenses to that charge, and the
17 consequences of entering a plea of guilty?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you satisfied with your attorney's
20 representation of you, including in connection with reaching
21 this plea agreement?

22 THE DEFENDANT: Yes.

23 THE COURT: I'm now going to explain certain
24 constitutional rights that you have. You will be giving up
25 these rights if you enter a plea of guilty.

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1 Under the Constitution and laws of the United States,
2 you are entitled to a speedy and a public trial by a jury on
3 the charge contained in the information.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: At that trial, you would be presumed to be
7 innocent. The government would be required to prove you guilty
8 by competent evidence and beyond a reasonable doubt before you
9 could be found guilty. You would not have to prove that you
10 were innocent, and a jury of 12 people would have to agree
11 unanimously that you were guilty.

12 Do you understand that?

13 THE DEFENDANT: Yes, yes.

14 THE COURT: At that trial and at every stage of your
15 case, you would be entitled to be represented by an attorney,
16 and if you could not afford one, one would be appointed to
17 represent you free of charge.

18 Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: During a trial, the witnesses for the
21 government would have to come to court and testify in your
22 presence and your lawyer could cross-examine the witnesses for
23 the government, object to evidence offered by the government
24 and, if you desired, issue subpoenas, offer evidence, and
25 compel witnesses to testify on your behalf.

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1 Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: At a trial, although you would have the
4 right to testify if you chose to do so, you would also have the
5 right not to testify, and no inference or suggestion of guilt
6 could be drawn from the fact that you did not testify if that
7 was what you chose to do.

8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: At trial, the government would have to
11 prove each and every part or element of a charge beyond a
12 reasonable doubt for you to be convicted of that charge.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that if you were
16 convicted at a trial, that you would then have the right to
17 appeal that verdict?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Even at this time, right now, even as you
20 are in the process of entering this guilty plea, you have the
21 right to change your mind, plead not guilty, and go to trial.

22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: If you plead guilty and I accept your
25 plea, you will give up your right to a trial and the other

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1 rights that I have just described. There will be no trial, and
2 I will enter a judgment of guilty and sentence you on the basis
3 of your guilty plea after considering the submissions relating
4 to sentencing that I receive from you, your lawyer, and the
5 government as well as a presentence report prepared by the
6 probation department.

7 Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And if you plead guilty, you will also
10 have to give up your right not to incriminate yourself because
11 I will ask you questions about what you did in order to satisfy
12 myself that you are guilty as charged.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Mr. Dalack, let me just ask you this. The
16 information is one that the defendant waived, too, sometime
17 ago. This is not a new information, is that correct?

18 MR. DALACK: Yes, your Honor.

19 THE COURT: All right. Very good.

20 Mr. Arias, have you received a copy of the information
21 containing the charge against you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have you read it or has it been read to
24 you? Has it been translated to you?

25 THE DEFENDANT: Yes, yes.

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1 THE COURT: And have you had an opportunity to discuss
2 the information with Mr. Dalack?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand that you are charged in
5 Count One of the information with conspiring to distribute and
6 possess with intent to distribute controlled substances,
7 specifically, 400 grams and more of mixtures and substances
8 containing a detectable amount of fentanyl and mixtures and
9 substances containing a detectable amount of cocaine.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: And do you understand that under the plea
13 agreement you would be pleading guilty to a lesser included
14 offense within that charge, specifically, that you would be
15 conspiring to distribute and possess with intent to distribute
16 those controlled substances but without regard to a specific
17 quantity.

18 Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Let me confirm with the government that
21 that is an accurate recitation of the lesser included offense
22 here.

23 MS. SMYSER: Yes, your Honor.

24 THE COURT: Ms. Smyser, would you please set out the
25 elements of that offense.

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1 MS. SMYSER: Yes, your Honor.

2 In order to prove the defendant guilty of conspiring
3 with others to distribute fentanyl and cocaine, in violation of
4 Title 21 U.S.C. 846 and 841(b)(1)(C), the government would have
5 to prove at a trial beyond a reasonable doubt:

6 First, that there were -- was an agreement or
7 understanding between at least two people to violate the
8 narcotics laws of the United States;

9 Second, that the defendant knowingly became a member
10 of the conspiracy; and

11 Third, that the controlled substances involved in the
12 conspiracy included a detectable amount of fentanyl and
13 cocaine.

14 THE COURT: Very good.

15 And as to venue?

16 MS. SMYSER: Oh, yes, your Honor. The government
17 would also be required to prove by a preponderance of evidence
18 that venue is proper in the Southern District of New York.

19 THE COURT: Very good.

20 Mr. Dalack, do you agree with the summary of the
21 elements provided by Ms. Smyser?

22 MR. DALACK: I do, your Honor.

23 THE COURT: And Mr. Arias, could you hear and
24 understand AUSA Smyser as she set out the elements of the
25 offense?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand that if you were to go
3 to trial, the government would have to prove each of those
4 elements beyond a reasonable doubt?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And do you understand as well that the
7 government would have to prove by a preponderance of the
8 evidence that venue was proper in this district, which
9 includes, among other places, Manhattan and the Bronx?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Turning to the consequences of a guilty
12 plea, do you understand that the maximum term of imprisonment
13 for this offense is 20 years' imprisonment?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Do you understand that the
16 offense carries a mandatory minimum term of three years'
17 supervised release and a maximum term of lifetime supervised
18 release?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Supervised release means that you will be
21 subject to monitoring when you are released from prison. There
22 are terms of supervised release with which a person must
23 comply. If you don't comply with them, you can be returned to
24 prison without a jury trial for all or part of the term of
25 supervised release imposed by the Court. Under those

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1 circumstances, you would not be given any credit towards that
2 term for the time you had served in prison as a result of your
3 sentence for this offense, nor would you necessarily be given
4 any credit towards that term for any time you had spent on
5 post-release supervision.

6 Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: The maximum fine for this offense is the
9 greatest of \$1 million, twice the gross pecuniary gain derived
10 from the offense, or twice the gross pecuniary loss to people
11 other than you resulting from the offense.

12 Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: For pleading guilty to this crime, you
15 will also be required to pay a mandatory \$100 special
16 assessment.

17 Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: For pleading guilty to this crime, you may
20 be compelled to forfeit any and all property constituting and
21 derived from proceeds obtained by your criminal conduct.

22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you also understand that if I accept
25 your guilty plea and adjudge you guilty, that may deprive you

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1 of valuable civil rights, such as, the right to vote, the right
2 to hold public office, the right to serve on a jury, and the
3 right to possess any kind of firearm?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Are you a United States citizen?

6 THE DEFENDANT: I'm a resident.

7 THE COURT: You are not a United States citizen, is
8 that correct?

9 THE DEFENDANT: No.

10 THE COURT: Let me rephrase that. Are you a
11 United States citizen?

12 THE DEFENDANT: No.

13 THE COURT: Do you understand that as a result of your
14 guilty plea --

15 THE INTERPRETER: Hold on.

16 THE COURT: Okay.

17 (Pause)

18 THE COURT: Do you understand that as a result of your
19 guilty plea, there may be adverse effects on your immigration
20 status, including further detention following completion of
21 your sentence?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that as a result of your
24 guilty plea, you may be removed from the United States, denied
25 citizenship, and denied admission to the United States in the

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1 future?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you discussed the possible
4 immigration consequences of a guilty plea with your lawyer?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Under current law, there are sentencing
7 guidelines as well as other factors set forth in the
8 sentencing statutes that judges must consider in determining a
9 sentence.

10 Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Have you spoken with your attorney about
13 the sentencing guidelines and those other factors?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that the Court will not
16 be able to determine the guideline range that will form one
17 part of my determination of what a reasonable sentence will be
18 in your case until after a presentence report has been prepared
19 and until after you, your attorney, and the government have all
20 had an opportunity to challenge any of the facts reported there
21 by the probation department?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that even though the
24 parties have agreed in the plea agreement that the sentencing
25 guidelines recommend for you a sentence of between 57 and 71

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1 months' imprisonment, the parties' agreement about what the
2 sentencing guidelines recommend is not binding on the probation
3 department and it's not binding on the Court?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that even after the
6 Court has determined what guideline range applies to your case,
7 the Court has the discretion under the current law to impose a
8 sentence that is higher or lower than the one recommended by
9 the sentencing guidelines?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand that even if your
12 attorney or anyone else has attempted to predict what your
13 sentence will be, their prediction could be wrong? No one—not
14 your attorney, not the government's attorney, no one—can give
15 you any assurance of what your sentence will be because I'm
16 going to decide your sentence, and I'm not going to do that now
17 and I really can't do that now. Instead, I'm going to wait
18 until I receive a presentence report prepared by the probation
19 department. I'm going to wait until I receive what I know will
20 be thoughtful sentencing submissions by the defense and the
21 government. I'm going to do my own independent calculation of
22 what the sentencing guidelines recommend. Most of all, I'm
23 going to determine what a just and reasonable sentence is for
24 you based on all of the factors contained in the sentencing
25 statute which is known as Section 3553(a).

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1 Do you understand all that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you discussed these issues and the
4 overall sentencing process with Mr. Dalack?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Even if your sentence is different from
7 what your attorney or anyone else has told you it might be,
8 even if it's different from what you expect, even if it's
9 different from the advisory guideline range contained in your
10 plea agreement, you would still be bound by your guilty plea
11 and you would not be allowed to withdraw your guilty plea.

12 Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has anyone threatened you or anyone else
15 or forced you in any way to plead guilty?

16 THE DEFENDANT: No, sir.

17 THE COURT: All right. Counsel have handed up the
18 signed plea agreement, again, Government Exhibit 1.
19 Ms. Smyser, I see here the signature of Camille Fletcher, the
20 assigned assistant United States Attorney, and the authorized
21 electronic signature of Negar Tekeei, the co-chief of the
22 Narcotics Unit. Are those the signatures or authorized
23 signatures of those persons?

24 MS. SMYSER: Yes, your Honor.

25 THE COURT: Mr. Dalack, I see here your signature

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1 dated today. Is that your signature?

2 MR. DALACK: Yes, your Honor.

3 THE COURT: And Mr. Arias, I see here your signature
4 dated today. Is that your signature?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did you read this agreement or, rather,
7 was it translated to you before you signed it?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Did you discuss it with your attorney
10 before you signed it?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Did you believe that you understood the
13 agreement at the time you signed it?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Did you willingly sign the agreement?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Did anyone force you to sign the
18 agreement?

19 THE DEFENDANT: No, sir.

20 THE COURT: Do you have any agreement with the
21 government about your plea or your sentence that has been left
22 out, that has been omitted from this plea agreement?

23 MR. DALACK: If I could speak to that, your Honor?

24 THE COURT: Yes.

25 MR. DALACK: If we could move this brief portion of

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1 the record under seal --

2 THE COURT: Very good.

3 MR. DALACK: -- I would be grateful.

4 THE COURT: From this moment, we will be under seal
5 until I say otherwise.

6 (Pages 21 through 23 sealed)

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1 THE COURT: All right. Back on the record -- back --
2 we are no longer under seal.

3 Ms. Smyser, would you kindly summarize the central
4 terms of the plea agreement.

5 MS. SMYSER: Yes, your Honor.

6 As described in the plea agreement, the defendant is
7 pleading to a lesser included offense of the information, to a
8 conspiracy to distribute fentanyl and cocaine in violation of
9 21 United States Code 846 and 841(b)(1)(C).

10 Under the government's calculation, the stipulated
11 guidelines range here is 57 to 71 months' imprisonment and it
12 includes a minor role reduction. The defendant here --

13 THE COURT: I noted that there is a minor role
14 reduction both under chapter 3, but there -- and this is a
15 detail I hadn't focused on until this case, I see that the base
16 offense level for the narcotics offense itself is reduced an
17 additional two levels because of the minor role reduction in
18 Chapter 3.

19 MS. SMYSER: That is correct under 2D1.1(a)(5).

20 In addition, the defendant has agreed to waive his
21 right to appeal under certain circumstances. One is that he
22 will not appeal a sentence that is less than the guidelines
23 range or within the stipulated guidelines range, he will not
24 appeal a fine of less than a million dollars, he will not
25 appeal based on effect on his immigration consequences, and he

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1 will not appeal based on a failure to produce discovery aside
2 from any evidence related to his actual innocence.

3 THE COURT: Very good. Thank you.

4 Mr. Dalack, are you in agreement with AUSA Smyser's
5 summary of those terms?

6 MR. DALACK: I am, Judge. Thank you.

7 THE COURT: And Mr. Arias, did you hear and understand
8 AUSA Smyser as she described certain terms of the plea
9 agreement?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. I want to highlight just one
12 of those terms.

13 Do you understand that, under the agreement, you are
14 giving up your right to appeal or otherwise challenge your
15 sentence so long as I do not sentence you to more than 71
16 months' imprisonment?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Has anyone made any promise or done
19 anything other than what's contained in the plea agreement to
20 induce you to plead guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: Has anyone made a promise to you as to
23 what your sentence will be?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you still wish to plead guilty pursuant

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1 to this agreement?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Mr. Arias, we are now at the
4 point where I would like you to tell me in your own words what
5 you did that makes you believe that you are guilty of the
6 lesser included offense within Count One of the information.

7 I see that you will be reading from a document. Is
8 that correct?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: That's fine. I just need to confirm
11 before you start reading that you have reviewed what is written
12 there and that you are confident that everything there is
13 accurate. Is that so?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Go ahead and tell me in your own
16 words what you did that makes you believe you are guilty of the
17 lesser included offense within Count One. Just kindly speak
18 slowly and distinctly for the benefit of the translator and of
19 course the court reporter.

20 THE DEFENDANT: Okay, sir. In August 2021, in the
21 Bronx, I agreed to receive a package from another person who --
22 which I knew contained drugs. I'm sorry. I know that what I
23 have done was wrong, and I will never make this mistake again.

24 THE COURT: All right. Thank you, Mr. Arias. I have
25 just several follow-up questions. You may be seated, though.

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1 When you say that you knew that the package contained
2 drugs, did you know that the drugs were illegal narcotics?

3 THE DEFENDANT: I didn't know which specific drug it
4 contained.

5 THE COURT: Did you know that the drugs that were in
6 the package were ones that it is illegal to distribute or
7 possess with intent to distribute under federal law?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. And Mr. Dalack, anything -- can you
10 help me with that one? I take it it is undisputed, Mr. Dalack,
11 that the package in fact included fentanyl and cocaine.

12 MR. DALACK: Yes.

13 THE COURT: Correct?

14 MR. DALACK: Yes, your Honor.

15 THE COURT: Mr. Arias, did the package in fact include
16 fentanyl and cocaine?

17 MR. DALACK: One correction, your Honor. I believe
18 the package that's at issue that we are discussing contained
19 fentanyl, and then there was cocaine found in his apartment.

20 THE COURT: Ms. Smyser, is that correct?

21 MS. SMYSER: That is correct, your Honor.

22 THE COURT: All right. Mr. Arias, did the package in
23 fact contain fentanyl?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. When you did these acts, did

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1 you know that what you were doing was wrong?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Did you know that you were committing a
4 crime?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Does government counsel agree that there
7 is a sufficient factual predicate for a guilty plea?

8 MS. SMYER: Yes, your Honor. And just to make it
9 clear, I want to proffer that cocaine was found in his
10 apartment after he accepted the package.

11 THE COURT: Do I need to allocute him on that?

12 MS. SMYER: I don't think he needs to know the
13 particular illegal narcotics that were in his home, but you may
14 ask him whether drugs were found in his home.

15 THE COURT: Fair enough.

16 Mr. Arias, the government has represented that illegal
17 drugs were found in your home. Did you in fact possess in your
18 home illegal narcotics?

19 THE DEFENDANT: Drugs were found, yes.

20 THE COURT: In your apartment?

21 THE DEFENDANT: Not in my apartment, where I was
22 living.

23 THE COURT: And were you among the persons responsible
24 for those drugs being there?

25 THE DEFENDANT: Yes.

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1 THE COURT: Were those drugs in fact cocaine?

2 THE DEFENDANT: Yes.

3 THE COURT: And did you know that the drugs that were
4 in the apartment were illegal drugs, something that is illegal
5 to possess with intent to distribute under the law?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Ms. Smyser, anything further?

8 MS. SMYSER: Nothing further.

9 THE COURT: Defense counsel, do you agree that there
10 is a sufficient factual predicate for a guilty plea?

11 MR. DALACK: Yes, I do, your Honor.

12 THE COURT: Mr. Dalack, do you know of any valid
13 defense that would prevail at trial or any reason why your
14 client should not be permitted to plead guilty?

15 MR. DALACK: No, your Honor.

16 THE COURT: Mr. Arias, are you pleading guilty today
17 because you are in fact guilty?

18 THE DEFENDANT: Yes.

19 THE COURT: Are you pleading guilty voluntarily and of
20 your own free will?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Can government counsel represent that had
23 the case gone to trial, it had sufficient evidence of each
24 element to establish a conviction on this offense?

25 MS. SMYSER: Yes, your Honor.

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1 THE COURT: All right. Mr. Arias, because you have
2 acknowledged that you are in fact guilty as charged in the
3 lesser included offense within the scope of Count One of the
4 information, because I am satisfied that you know of your
5 rights, including your right to go to trial, because I am
6 satisfied that you are aware of the consequences of your plea,
7 including the sentence that may be imposed, and because I find
8 that you are voluntarily pleading guilty, I accept your guilty
9 plea and enter a judgment of guilty on the lesser included
10 offense.

11 All right. The next step in your case, Mr. Arias,
12 will involve the sentencing process, and I'm going to ask you
13 to pay close attention to what I am about to say. The
14 probation department is going to want to interview you in
15 connection with a presentence report that it will prepare. If
16 you choose to speak with the probation department, please make
17 sure that anything you say to them is truthful and accurate. I
18 read those reports carefully and they are often quite important
19 to me, along with the parties' sentencing submissions, in
20 deciding what sentence to impose and what sentence is just and
21 reasonable. You and your counsel have a right to examine the
22 report, you have a right to comment on it at the time of
23 sentencing. I urge you to read the report and to discuss it
24 with Mr. Dalack before sentencing. If there are any mistakes
25 in the report, please point them out to Mr. Dalack so that he

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1 can bring them to my attention before sentencing.

2 Will you agree to do that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Mr. Dalack, I take it this is not a case
5 in which you are seeking an expedited sentence.

6 MR. DALACK: No, your Honor.

7 THE COURT: All right. Counsel, how is, for
8 sentencing, Tuesday, September 12, at 11 a.m.

9 MS. SMYSER: That's fine with the government, your
10 Honor.

11 MR. DALACK: That works very well for the defense.
12 Thank you, Judge.

13 THE COURT: Very good. I understand that's consistent
14 with your preferences expressed to Mr. Smallman.

15 MS. SMYSER: Yes, your Honor.

16 THE COURT: Very good. I'm happy to schedule the
17 sentencing for that date and time.

18 Mr. Dalack, you should arrange for your client to be
19 interviewed by the probation department within two weeks.

20 Ms. Smyser, the government should provide its case
21 summary to the probation department within the next two weeks.

22 Defense submissions are due two weeks before
23 sentencing, and the government's submission is due one week
24 before.

25 All right. The next issue and final issue I need to

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1 take up involves whether the defendant's bail is to be
2 continued or whether he is to be remanded. What is the
3 government's view?

4 MS. SMYSER: Your Honor, the government's view is that
5 remanding the defendant is mandatory under 3145(c).

6 THE COURT: I think --

7 THE INTERPRETER: Sorry. The interpreter requests a
8 repetition.

9 THE COURT: Let's start that again. Ms. Smyser,
10 what's the government's view.

11 MS. SMYSER: Your Honor, the government's view is that
12 the defendant's remand is mandatory under the statute.

13 THE COURT: Okay. Mr. Dalack.

14 MR. DALACK: Yes, your Honor. We submit to the Court
15 that there are exceptional grounds to keep Mr. Arias on bail
16 pursuant to 18 U.S.C. 3145(c), largely for the reasons set
17 forth in Judge Stein's opinion in *United States v. Dwight Boyd*.
18 Here, as was the case with Mr. Boyd, Mr. Arias is pleading
19 guilty to a lesser included offense. He played a minor role.
20 He has been forthcoming with the U.S. Attorney's office about
21 his role in the offense since his arrest. He's been gainfully
22 employed. He has had absolutely no issues on pretrial
23 supervision.

24 THE COURT: Okay. I am going to permit the defendant
25 to remain on bail pending sentencing, substantially for the

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1 reasons given by Mr. Dalack. But just to unpack it a little
2 bit, the government is absolutely correct that, under Section
3 3143 for this offense mandatory -- remand is mandatory.
4 However, there is an exception under Section 3145(c), where
5 exceptional reasons justify permitting a defendant to be
6 released. It is not sufficient -- it is necessary but not
7 sufficient that the defendant not be a risk of flight or a
8 danger to the community. Something more needs to be proven.
9 And while ordinarily, in ordinary times, that is a tough burden
10 to meet, I, like many of my colleagues, have found during the
11 era marked by the pandemic and more recently by the terrible
12 conditions in the MDC that that standard is met. The pandemic
13 is now on the wane, but the conditions at the MDC remain
14 unacceptable. They have been described to me by too many
15 people in too many cases for it any longer to be factually
16 disputable that that is just an inhospitable, terrible place to
17 be.

18 Under those circumstances, until the government can --
19 the Bureau of Prisons really can get its act together in
20 connection with that facility, my judgment is that where a
21 defendant is not a risk of flight, is not a danger to the
22 community, and there aren't special reasons for them to be
23 remanded, avoiding putting a defendant in conditions like that
24 qualifies as an exceptional reason under 3145(c).

25 Judge Stein's opinion in *Boyd* is substantially to that

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1 effect, save that he was writing in February of 2022 when the
2 pandemic was more of a factor.

3 My assessment here is that the pandemic is really not
4 influential to me anymore about that. It's more that the MDC
5 is too dreadful a place to put someone who is isn't a risk of
6 flight or danger to the community. So it is on that ground
7 that I will deny the request, respectfully, for remand.

8 Let me ask you, Ms. Smyser, given that ruling, is
9 there any need to make any change to the existing bail
10 conditions?

11 MS. SMYSER: No, your Honor.

12 THE COURT: All right.

13 Mr. Arias, do you understand that all the conditions
14 on which you have been released up until now continue to apply
15 and that a violation of any of those conditions can have very
16 serious consequences for you at the time of sentencing?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You must be in this courtroom for
19 sentencing at the date and time that I have set or you will be
20 guilty of a separate crime called bail jumping and you will be
21 subject to a fine and/or a prison term in addition to whatever
22 sentence you may receive for the crime to which you have just
23 pled guilty.

24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Is there anything further from the
2 government?

3 MS. SMYSER: No. Nothing from the government. Thank
4 you, your Honor.

5 THE COURT: Is there anything further from the
6 defense?

7 MR. DALACK: Nothing further, your Honor, but please
8 forgive me. I neglected to take note of the time on September
9 12.

10 THE COURT: That would be 11 a.m.

11 MR. DALACK: Thank you.

12 THE COURT: All right. We stand adjourned.

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